



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

**[Docket No.: 220105-0005]**

**RIN 0648-BK68**

#### **Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery;**

#### **Amendment 21**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS implements the measures included in Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan as adopted and submitted by the New England Fishery Management Council. This action allows for more controlled access to the scallop resource by the limited access and limited access general category fleets and increases monitoring to a growing directed scallop fishery in Federal waters, including the Northern Gulf of Maine Management Area. These management measures are intended to promote conservation of the scallop resource in the Northern Gulf of Maine Management Area and to manage total removals from the area by all fishery components. Amendment 21 also expands flexibility in the limited access general category individual fishing quota fishery to reduce impacts of potential decreases in ex-vessel price and increases in operating costs.

**DATES:** Effective March 31, 2022.

**ADDRESSES:** The Council has prepared a draft Environmental Assessment (EA) for this action that describes the measures contained in Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and other considered alternatives and analyzes

the impacts of these measures and alternatives. The Council submitted a draft of the amendment to NMFS that includes the draft EA, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and a Regulatory Impact Review (RIR). Copies of supporting documents used by the New England Fishery Management Council, including the EA and RIR, are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: <https://www.nefmc.org/library/amendment-21>.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by using the search function and entering either the title of the collection or the OMB Control Number 0648-0546.

**FOR FURTHER INFORMATION CONTACT:** Travis Ford, Fishery Policy Analyst, (978) 281-9233.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

On December 3, 2021, pursuant to section 304(a)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS approved Amendment 21 to the Atlantic Sea Scallop FMP in its entirety as recommended by the New England Fishery Management Council. The Council developed this action, and the measures described in this rule, to adjust the Northern Gulf of Maine (NGOM) Management Program to allow more controlled access by the limited access and limited access general category (LAGC) components, increase monitoring to support a growing directed scallop fishery in Federal waters, and adjust the LAGC individual fishing quota (IFQ) program to support overall economic performance while allowing for continued

participation in the general category fishery at varying levels.

This final rule implements Amendment 21, which:

- Accounts for biomass in the NGOM as part of the overfishing limit (OFL) and the acceptable biological catch (ABC) to be consistent with other portions of scallop resource management;
- Develops landing limits for all permit categories in the NGOM and establishes an 800,000-lb (362,874-kg) NGOM Set-Aside trigger for the NGOM directed fishery, with a sharing agreement for access by all permit categories for allocation above the trigger. Allocation above the trigger will be split 5 percent for the NGOM fleet and 95 percent for limited access and LAGC IFQ fleets;
  - The NGOM Set-Aside supports a directed LAGC fishery (including NGOM and LAGC IFQ permitted vessels) at a possession limit of 200 lb (90.7 kg) per vessel per day.
  - The Council will determine how allocation above the NGOM Set-Aside trigger could be harvested by the limited access and LAGC IFQ components in a subsequent specifications package or framework adjustment.
- Expands the scallop industry-funded observer program to monitor directed scallop fishing in the NGOM by using a portion of the NGOM allocation to off-set monitoring costs;
- Allocates 25,000 lb (11,340 kg) of the NGOM allocation to increase the overall Scallop Research Set-Aside (RSA) and support Scallop RSA compensation fishing;
- Increases the LAGC IFQ possession limit from 600 lb (272 kg) to 800 lb (363 kg) per trip only for access area trips;
- Prorates the daily observer compensation rate in 12-hour increments for observed

LAGC IFQ trips longer than 1 day; and

- Allows for temporary transfers of IFQ from limited access vessels with IFQ to LAGC IFQ-only vessels.

The Magnuson-Stevens Act requires NMFS to approve, partially approve, or disapprove measures proposed by the Council based on whether the measures are consistent with an FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law.

NMFS published a Notice of Availability (NOA) announcing its review of the Amendment on September 8, 2021 (86 FR 50320). The public comment period on the NOA ended on November 8, 2021. NMFS published a proposed rule for Amendment 21 on October 5, 2021 (86 FR 54903). The public comment period for the proposed rule ended on November 4, 2021.

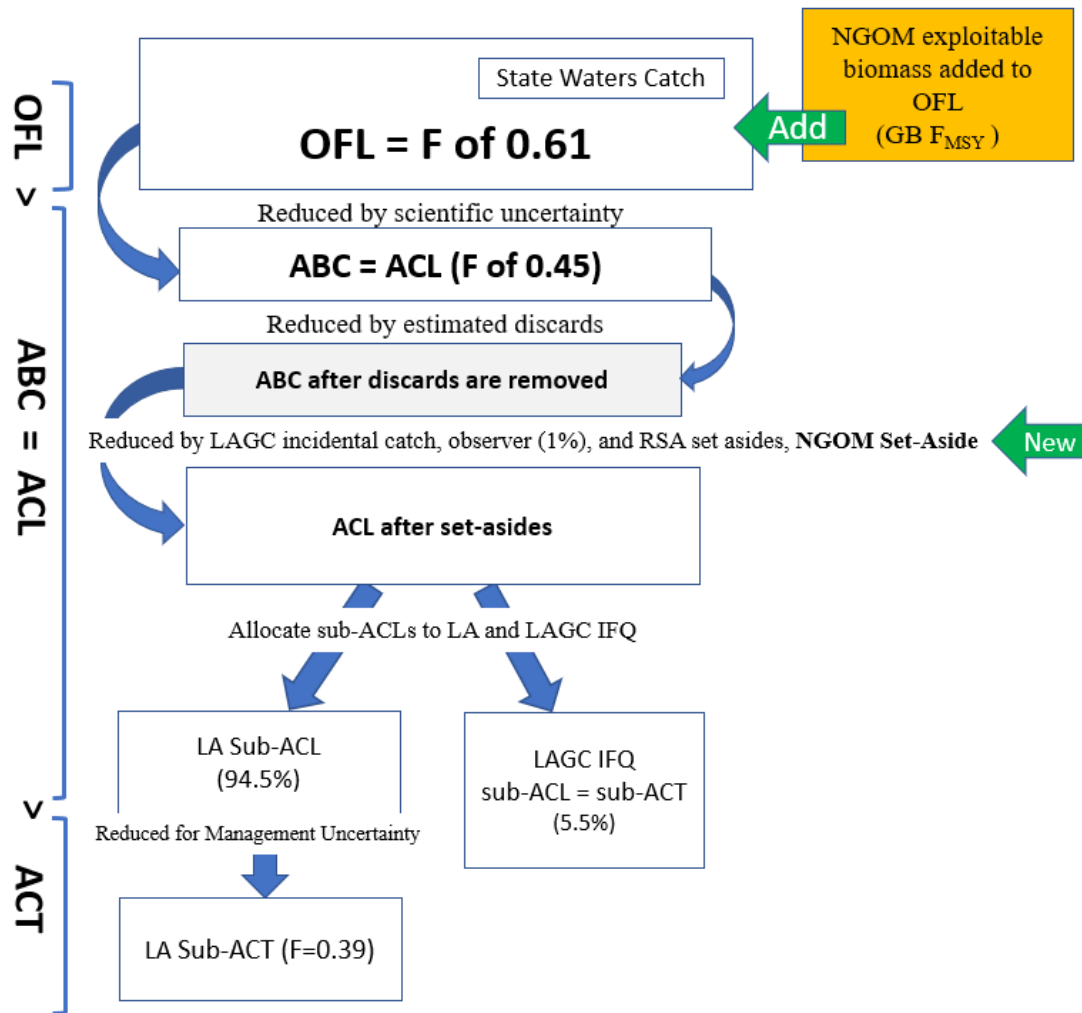
*Accounting for the NGOM as part of the Acceptable Biological Catch and Annual Catch Limit*

Amendment 21 modifies the annual catch limit (ACL) flowchart to account for the scallop biomass in the NGOM as part of the legal limits in the fishery by adding biomass from the area into calculations of the OFL and ABC. This action moves the accounting of the NGOM ACL from only within the OFL into the OFL and ABC/ACL for the entire fishery (Figure 1). By including exploitable scallop biomass from the NGOM as part of the scallop OFL and ABC, the ACL and sub-ACLs for the limited access and LAGC IFQ, and the limited access annual catch target (ACT) will increase. The observer set-aside will also increase with the NGOM as part of the OFL/ABC. The ABC/ACL will be reduced by the NGOM Set-Aside value, along with the Research and Observer Set-Asides and incidental catch (Figure 1). The Council will set specifications for the NGOM through future specifications actions.

The Council will use the following approach to include the NGOM in the ACL flowchart:

1. Exploitable biomass from surveyed areas of the NGOM will be estimated;
2. The contribution to the OFL will be calculated at the fishing mortality (F) rate equal to the estimate of F at Maximum Sustainable Yield ( $F_{MSY}$ ) for Georges Bank from the most recent research or management track assessment, unless direct estimates of  $F_{MSY}$  for the Gulf of Maine are available; and
3. Combining OFL values from areas on Georges Bank/Mid Atlantic and the NGOM could be done in a single model (*e.g.*, add the NGOM to the Scallop Area Management Simulator model), or as separate calculations. The method will, in part, be determined by the available data.

Incorporating the NGOM into the ACL flowchart will have no impact on limited access days-at-sea (DAS), or any other fishery allocation that is part of the annual projected landings (APL).



**Figure 1 -- Example of Scallop Legal Limits (OFL, ABC, and ACL) with the NGOM Incorporated into Estimates of the OFL and ABC.**

### *Creating the NGOM Total Allowable Limit*

Amendment 21 requires that the Council set an overall total allowable limit (TAL) for the NGOM management area for all permit categories. If NGOM survey data are available, the NGOM TAL will be developed using a projection method to estimate exploitable biomass in upcoming fishing years. The allowable landings will be set by applying an F rate ranging from  $F=0.15$  to  $F=0.25$  to exploitable biomass in open areas of the NGOM, as specified by the Council. Modifying the F rate used to set the NGOM TAL could be adjusted in a future specification or framework action. A portion of the

NGOM TAL will be added to the fishery-wide RSA (described below). In addition, one percent of the NGOM's contribution to the fishery-wide ABC will be removed from the NGOM TAL to off-set monitoring costs (described below).

*NGOM Set-Aside and NGOM Annual Projected Landings*

The remaining portion of NGOM TAL after contributions to the fishery-wide observer and RSAs are removed will then be allocated to the NGOM Set-Aside up to the NGOM Set-Aside trigger (800,000 lb (362,874 kg)). The NGOM Set-Aside supports a directed LAGC fishery (including NGOM and LAGC IFQ permitted vessels) in the NGOM Management Area at a possession limit of 200 lb (91 kg) per vessel per day. If there is additional allocation available above the 800,000-lb (362,874-kg) trigger, the allocation above the trigger will be shared between the NGOM Set-Aside (5 percent of the allocation above the trigger) and the NGOM APL (95 percent of the allocation above the trigger). The NGOM APL will then be added to the overall APL to increase allocations for the limited access and LAGC IFQ fleets. If there is allocation above the NGOM Set-Aside trigger, the Council will determine the methods of how the NGOM APL could be harvested by the limited access and LAGC IFQ components in a subsequent specifications package or framework adjustment.

The trip limit for LAGC vessels fishing the NGOM Set-Aside (*i.e.*, NGOM and IFQ vessels) will be 200 lb (90.7 kg) per vessel per day. Landings from LAGC IFQ vessels fishing the NGOM Set-Aside will be deducted from their IFQ as well as from the NGOM Set-Aside. LAGC vessels with incidental catch permits (LAGC Category C) will be permitted to land up to 40 lb (18 kg) per day while fishing on non-scallop trips in the NGOM, if the area is open for LAGC vessels fishing against the NGOM Set-Aside. Scallop landings by vessels with LAGC incidental permits will not count against the NGOM Set-Aside. Incidental catch from the area will be tracked as part of the final year-end catch accounting.

For catch accounting purposes, all landings from the NGOM will be included in the review of year-end catch data.

#### *NGOM Accountability Measures*

Any overage of NGOM Set-Aside or NGOM APL allocations fished inside the NGOM Management Area will be subject to a pound-for-pound payback in a subsequent fishing year after an overage is determined. If reliable data are available to calculate an overage (Year 1), NMFS may implement these accountability measures (AM) in the following fishing year (Year 2) through the rulemaking process for updated fishery specifications. If reliable data are not available in time for the start of the following fishing year, then the AMs will be implemented 2 years after the overage occurred (Year 3). Data may not be available by the start of the following fishing year because NMFS does not complete final catch accounting until June of the following fishing year. For example, if an overage occurred in fishing year 2021, NMFS would not have the final accounting data until June of fishing year 2022. The AMs could then be implemented at the April 1 start of fishing year 2023.

#### *Expanding the Scallop Industry-Funded Observer Program to the NGOM*

Amendment 21 expands the observer call-in requirement to all scallop vessels operating in the NGOM, including NGOM-permitted vessels. This expansion of the call-in requirement facilitates observer coverage in the NGOM Management Area.

This action removes one percent of the NGOM ABC from the NGOM TAL to offset monitoring costs for vessels fishing in this area. This allocation will be removed from the NGOM TAL before allocating to the NGOM set-aside. This allocation could be used to support monitoring of all permit categories that have access to the NGOM Management Area. The NGOM monitoring set-aside will be added to the fishery-wide observer set-aside that is calculated as one percent of the ABC.



The scallop observer program will be expanded to cover directed scallop trips in Federal waters in the NGOM Management Area. Scallop trips by LAGC vessels in the NGOM are currently not covered by the observer program. This expanded program will utilize the cumulative allocation of the NGOM observer set-aside and the observer set-aside to support observer coverage in the scallop fishery. All compensation allocation for all observed trips will come out of the same pool, and NMFS will administer a single scallop observer program. At a minimum, observer coverage levels for the NGOM Management Area will be set to meet Standardized Bycatch Reporting Methodology requirements.

The amount of daily compensation available for LAGC trips in the NGOM may vary from the daily compensation rate for LAGC IFQ vessels that have a higher trip limit. Vessels selected to carry an observer will be able to land the full amount of the daily observer compensation rate in addition to the NGOM trip limit. For example, if the daily compensation rate is set at 100 lb (45 kg), vessels with observers would be able to land 300 lb (136 kg) that trip.

#### *NGOM Research Set-Aside*

Amendment 21 sets aside 25,000 lb (11,340 kg) from the NGOM TAL to support RSA compensation fishing in the NGOM management area and increase the overall allocation available for the scallop RSA program. The total amount of RSA available will be the sum of the NGOM RSA and the existing 1.25 million-lb (566,990-kg) fishery-wide RSA (*i.e.*, 1.275 million lb (573,330 kg)).

RSA compensation fishing in the NGOM management area will be allowed. Although, NGOM RSA will be combined with the overall RSA, RSA compensation fishing in the NGOM will be capped at the available NGOM RSA, *i.e.*, 25,000 lb (11,340 kg). Any vessels that are awarded NGOM RSA compensation are required to declare into the area and fish exclusively within the NGOM Management Area. Compensation

fishing in the NGOM Management Area could be done to support any research project awarded through the Scallop RSA. However, projects focusing on research in the NGOM will have the first opportunity to fish compensation allocation in the NGOM. NMFS would administer this process.

This action does not mandate that NGOM RSA be harvested strictly in the NGOM Management Area. Vessels allocated NGOM RSA will have an option to fish NGOM RSA in the NGOM or in any other area available to RSA compensation fishing.

#### *Limited Access General Category Individual Fishing Quota Possession Limit*

Amendment 21 increases the LAGC IFQ possession limit to 800 lb (363 kg) for access area trips and maintains the 600-lb (272-kg) possession limit for open area trips. The LAGC IFQ component has been subject to a possession limit since the program's inception through Amendment 11. Interest in increasing the 600-lb (272-kg) trip limit through this action is based on the continued increase of operating expenses, which are principally driven by fuel costs associated with longer steam times. For LAGC IFQ vessels that elect to do so, transiting farther offshore to fish access areas with higher landings per unit of effort and improved meat yield leads to increased trip costs due to higher fuel expenses associated with longer steam times. Increasing the access area possession limit will reduce the overall number of trips and combined steam time needed to harvest quota from offshore access areas, thereby reducing overall trip costs (*i.e.*, fuel) and operating expenses (*i.e.*, vessel maintenance) relative to the current 600-lb (272-kg) limit. Increasing the access area possession limit could offer LAGC IFQ vessels more flexibility with regard to timing access area trips around weather conditions, which could potentially improve safety in this component of the fishery.

#### *Observer Compensation Available for LAGC IFQ Vessels*

Amendment 21 will make LAGC IFQ vessels eligible for additional compensation when carrying an observer on board and fishing trips longer than 1 day (24

hours). The daily compensation rate, as determined by NMFS, will be prorated at 12-hour increments for trips exceeding 24 hours. The amount of compensation a vessel could receive on 1 trip would be capped at 2 days (48 hours) and vessels fishing longer than 48 hours will not receive additional compensation allocation. For example, if the observer compensation rate is 200 lb/day (90.7 kg/day) and an LAGC IFQ vessel carrying an observer departs on July 1 at 2200 and lands on July 3 at 0100, the length of the trip would equal 27 hours, or 1 day and 3 hours. In this example, the LAGC IFQ vessel would be eligible for 1 day plus 12 hours of compensation allocation, *i.e.*, 300 lb (136 kg). An LAGC IFQ vessel will be able to harvest the trip limit and the daily compensation rate on the observed trip, or the vessel could harvest any unfished compensation on a subsequent trip while adhering to the commercial possession limit.

#### *Temporary Transfer of IFQ from Limited Access Vessels with IFQ (Combo Vessels) to LAGC IFQ-only Vessels*

Amendment 21 allows temporary transfers of IFQ from combo vessels to LAGC IFQ-only permits and maintains the existing prohibition on transferring quota to combo vessels. This action does not change how IFQ is allocated. Quota accumulation caps remain consistent with the limits established through Amendment 15 for LAGC IFQ-only permits, regardless of any additional quota that may become available through one-way, temporary transfers from combo vessels. An individual LAGC IFQ permit still may not hold more than 2.5 percent of the IFQ allocated to the LAGC IFQ component in a year and an ownership entity still may not hold more than 5 percent of the IFQ allocated to the LAGC IFQ component in a year. Allowing one-way, temporary transfers from combo vessels to LAGC IFQ-only permits increases the overall level of quota available to LAGC IFQ-only vessels, and it does not require changes to how allocations are estimated and distributed among the two fleets.

#### *Specifications and Framework Adjustment Process*

The regulations at 50 CFR part 648.55 list management measures that may be changed or implemented through specifications or framework actions. During the development of Amendment 21, the Council identified a list of specific issues that may be addressed through future specifications actions or framework adjustments. The existing scallop regulations do not need to be expanded to address concepts that the Council would like to adjust through a specifications package or a framework adjustment in the future. The Council's list included:

1. § 648.55(f)(25) Set-asides for funding research;
  - a. Contribution of RSA percentage and /or assigned pounds from the NGOM allocation.
2. § 648.55(f)(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations;
  - a. Observer set-aside percentage from the NGOM Allocation.
3. § 648.55(f)(35) Adjustments to the Northern Gulf of Maine scallop fishery measures;
  - a. Partition the NGOM into multiple sub-areas with separate allocations;
  - b. Partition the NGOM Set-Aside is multiple seasons;
  - c. Modify the F rate used to set the NGOM TAL; and
  - d. Harvest methods of the NGOM APL by the IFQ and limited access boats.
4. § 648.55(f)(37) Increases or decreases in the LAGC possession limit;
  - a. Accounting for access area trips in the LAGC IFQ fishery.
5. § 648.55(f)(38) Adjustments to aspects of ACL management, including accountability measures;
  - a. Modify how the NGOM is accounted for in the calculation of OFL, ABC, and ACLs.

In addition, the Council clarified that it could develop options for electronic monitoring to replace at-sea monitors in a future framework based on existing language in these existing regulations:

1. § 648.55(f)(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations;
2. § 648.11(g) *Industry-funded monitoring programs*. FMPs managed by the Council, including Atlantic Herring, Atlantic Salmon, Atlantic Sea Scallops, Deep-Sea Red Crab, Northeast Multispecies, and Northeast Skate Complex, may include industry-funded monitoring (IFM) programs to supplement existing monitoring required by the Standard Bycatch Reporting Methodology (SBRM), Endangered Species Act, and the Marine Mammal Protection Act. IFM programs may use observers, monitors, including at-sea monitors and portside samplers, and electronic monitoring to meet specified IFM coverage targets. The ability to meet IFM coverage targets may be constrained by the availability of Federal funding to pay NMFS cost responsibilities associated with IFM.

*Regulatory Adjustments and Corrections under Regional Administrator Authority*

NMFS is making several changes consistent with section 305(d) of the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. These adjustments do not make any substantive changes to the implications of the current regulations. First, NMFS revises § 648.14(i) to more clearly define the prohibitions based on the scallop regulations at § 648 Subpart D. As a result, this rule includes revisions to the regulatory text that reorganize and condense references to possession limits and restrictions. The specific regulations being revised or removed are specified in Table 1.

Second, in §§ 648.2, 648.14(i), 648.52, 648.55, and 648.59, NMFS makes revisions to consistently reference the Scallop Access Area Program throughout the regulations. Third, in § 648.14(i)(x), NMFS clarifies the presumption related to where scallops are caught (*i.e.*, Federal/state waters), not whether a vessel has a Federal scallop permit. Fourth, NMFS updates §§ 648.14(i)(x)(3)(iv)(B) and 648.52(a)(1) with a corrected reference to § 648.10(f). Fifth, in § 648.52(b), (c), (d), (e), (f), NMFS adds headings for consistency across paragraphs. Sixth, in § 648.52(f), NMFS removes duplicative possession limit language for IFQ vessels. Seventh, in § 648.53(h)(3)(i)(A) and (B), NMFS clarifies that the IFQ accumulation cap applies to the annual IFQ allocation, not the IFQ sub-ACL. Eighth, in § 648.53(h)(5)(i) and (ii), NMFS clarifies that these regulations apply to IFQ permit holders regardless of whether the permit is in confirmation of permit history (CPH). Ninth, in § 648.59(b)(4), to promote safety at sea, at the request of the Council, NMFS will allow vessels to enter or exit a Scallop Access Area more than once per trip if there is a compelling safety reason.

Finally, due to the extensive regulatory changes in this action, we are updating references throughout the scallop regulations that will change based on these regulatory adjustments. We have included a summary of all of the regulatory changes in this rule in Table 1.

**Table 1 -- Summary of Regulatory Changes to 50 CFR Part 648**

Section	Authority	Summary of Changes
§§ 648.2, 648.14(i), 648.52, 648.55, 648.59	305(d)	Changing to consistently reference the Scallop Access Area Program throughout the regulations.
§ 648.14(i)(iii)	305(d)	Clarifying possession limits and restrictions which are already described in §§ 648.52 and 648.59.
§ 648.14(i)(x)	305(d)	Clarifying the presumption related to where scallops are caught ( <i>i.e.</i> , Federal/state waters), not whether a vessel has a Federal scallop permit.
§ 648.14(i)(x)(3)(iii)(C) and (D)	305(d)	Clarifying possession limits and restrictions which are already described in § 648.52 for LAGC vessels in the NGOM are clearly stated later in the section specific to IFQ and NGOM vessels. Deleting to remove duplicative text.
§§ 648.14(i)(x)(3)(iv)(B), 648.52(a)(1)	305(d)	Updating with corrected reference to § 648.10(f).
§ 648.14(i)(x)(4)(i)(A)	305(d) and Amendment 21	Revising IFQ possession and landing regulations based on Amendment 21 measures. Clarify regulations by referencing IFQ possession limits for open and access areas in § 648.52(a).
§ 648.14(i)(x)(4)(i)(C)	Amendment 21	Updating NGOM landings and possession regulations with Amendment 21 language ( <i>i.e.</i> , NGOM Set-Aside).
§ 648.14(i)(x)(4)(i)(D) and (G)	305(d)	Reducing duplicative language around possession and landing limits that are clearly stated later in § 648.52(a) and (c).
§ 648.14(i)(x)(5)(ii)	305(d)	Clarifying by cutting duplicative landings and possession prohibition, and referencing NGOM possession limit that is clearly stated in § 648.52(a).
§ 648.14(i)(x)(5)(iii)	Amendment 21	Updating NGOM regulations with Amendment 21 language ( <i>i.e.</i> , NGOM Set-Aside).
§ 648.14(i)(x)(6)	305(d)	Clarifying regulations by removing duplicative landing and possession limit prohibition for incidental permits, and referencing incidental possession limit that is clearly stated in § 648.52.
§ 648.52(a)(1) and (2)	Amendment 21	Updating regulations with LAGC IFQ possession limits for open and access area trips.
§ 648.52(a)(2)	Amendment 21	Clarifying that default access area trips in fishing year 2022 will be subject to the 600-lb (272-kg) trip limit.
§ 648.52(b), (c), (d), (e), (f)	305(d)	Adding headings for consistency.
§ 648.52(a)(2)	Amendment 21	Making in-shell possession limit consistent with increased LAGC IFQ access area trip limit.
§ 648.52(b)	Amendment 21	Updating NGOM regulations with Amendment 21 language ( <i>i.e.</i> , NGOM Set-Aside).

§ 648.52(f)	305(d)	Removing duplicative possession limit language for IFQ vessels.
§ 648.53(a)(3)(ii)	Amendment 21	Updating APL language to incorporate NGOM catch limit measures.
§ 648.53(a)(8)	Amendment 21	Adding language describing NGOM TAL and allocation structure.
§ 648.53(g)(1)	Amendment 21	Including NGOM contribution to observer set-aside.
§ 648.53(h)(3)(i)(A) and (B)	305(d)	Clarifying that the IFQ accumulation cap applies to the annual IFQ allocation, not the IFQ sub-ACL.
§ 648.53(h)(5)(i) and (ii)	305(d)	Clarifying that these regulations apply to IFQ permit holders regardless of whether permit is in CPH.
§ 648.53(h)(5)(i)(B)	Amendment 21	Specifying that temporary transfers from combo vessels to IFQ-only are allowed.
§ 648.53(h)(5)(ii)(A) and (iii)	Amendment 21	Clarifying that combo vessels are prohibited from permanently transferring or receiving IFQ.
§ 648.55(a)(1)	Amendment 21	Updating language to reflect NGOM catch limits.
§ 648.56(d)	Amendment 21	Including NGOM contribution to RSA.
§ 648.59(b)(4)	305(d)	Adjusting to promote safety at sea.



## Comments and Responses

We received eight comment letters on this action. Six individuals commented in support of the action. One individual and Fisheries Survival Fund (FSF), which represents the significant majority of full-time Limited Access permit holders in the Atlantic scallop fishery, commented in opposition to some measures in Amendment 21.

*Comment 1:* A general category industry member commented that the IFQ possession limit should be increased to at least 1,000 lb (454 kg) because vessels must travel 3 to 12 hours to fish in open and access areas. He comments that increasing the trip limit to all areas would reduce risk to vessels and reduce trip costs and the carbon footprint of the fleet.

*Response:* Amendment 21 increases the IFQ possession limit to 800 lb (363 kg) per trip for access area-only trips to address some of the issues raised by the commenter. The higher possession limit in access areas will reduce the number of trips and combined steam time needed to harvest quota from offshore access areas, thereby reducing overall trip costs (*i.e.*, fuel) and operating expenses (*i.e.*, vessel maintenance) relative to the current 600-lb (272 kg) limit. Increasing the access area possession limit to 800 lb (363 kg) could offer LAGC IFQ vessels more flexibility with regard to timing access area trips around weather conditions, which could potentially improve safety in this component of the fishery. In developing Amendment 21, the Council balanced the issues raised by the commenter and the Amendment's vision for the LAGC component, "a fleet made up of relatively small vessels, with possession limits to maintain the historical character of this fleet and provide opportunities to various participants including vessels from smaller coastal communities."

*Comment 2:* The same general category industry member commented that the Council should close the entire NGOM to limited access vessels because they decimate the available stock for the general category when they fish in the area.

*Response:* The purpose of Amendment 21, specific to the NGOM, is to allow for more controlled access by the limited access and LAGC components and increase monitoring in ways that support a growing directed scallop fishery in Federal waters. The 800,000-lb (362,874-kg) set aside supports some additional participation in the NGOM fishery by LAGC vessels without impacting the current harvest levels of existing participants. Amendment 21 provides the Council with the tools to control removals from the NGOM and better conserve the resource in the area. Further, it provides the mechanism to develop more controlled access to the NGOM by the limited access fleet once the allocation to the area exceeds the NGOM set-aside trigger. The Council considered limiting the cumulative maximum dredge width that could be fished in the NGOM, but ultimately found that there is no biological benefit to the resource in mandating smaller dredge sizes for the limited access fleet in the NGOM.

*Comment 3:* FSF commented that the NGOM set-aside amount of 800,000 lb (362,874 kg) developed in Amendment 21 does not provide “orderly access” to the limited access fleet because it would exclude limited access participants even during years of abundance. FSF continues that the recently-utilized 135,000-lb (61,235-kg) set-aside has already accommodated growth of the NGOM fishery, which was created to be a part-time dayboat fishery for vessels that predominately fish for other species (via Amendment 11). NGOM trips are set at 200 lb (90.7 kg); thus, under an 800,000-lb (362,874-kg) set-aside there would be 4,000 trips available, a number disproportionate to the size of the part-time NGOM scallop fishery.

*Response:* Using an 800,000-lb (362,874-kg) trigger for the NGOM set-aside supports increased fishing opportunities for all permit categories in the area and addresses the Council’s vision of continued participation in the general category fishery at varying levels and providing opportunities to various participants, including vessels from smaller coastal communities, as stated in Amendment 11 and reaffirmed through this action.

There are a total of 427 LAGC permits that potentially could fish in the NGOM set-aside. In addition, there are 338 IFQ permits that could fish the NGOM set-aside (765 vessels total). In 2019, 110 NGOM permits were issued, and 41 vessels (a combination of NGOM and IFQ vessels) landed scallops from the area. An 800,000-lb (362,874-kg) trigger supports additional participation in the NGOM fishery by some of the remaining 724 vessels that could access this fishery without impacting the current harvest levels of existing participants.

Further, because the LAGC share of the NGOM total allowable catch has been harvested in about a month in recent years (*i.e.*, 2018 –2021), setting a trigger value above recent allocation levels has the potential to lengthen the season for LAGC vessels and expand opportunities across more of the fishing year.

When the allocation to the NGOM is over this trigger, 5 percent will go to the NGOM set-aside, and 95 percent will go to the NGOM APL. This is intended to support access to the scallop resource in the area by limited access, LAGC IFQ, and LAGC NGOM vessels. Allocating 95 percent of the allocation over the trigger to the NGOM APL would quickly increase the share for the limited access and LAGC IFQ as the exploitable biomass in the area grows. This option would add to the existing allocations for the limited access and LAGC IFQ that come from Georges Bank and the Mid-Atlantic.

In 2017, the limited access fleet fished heavily in the NGOM on DAS. The limited access fleet landed an estimated 1,578,020 lb (715,778 kg) of scallops from March 1 through March 22. This shows that NGOM is capable of having biomass above the 800,000-lb (362,874-kg) trigger.

*Comment 4:* FSF commented that, since Amendment 11, set-aside has been set at levels that are consistent with NGOM vessels' participation in the fishery. For many years, the set-aside was 70,000 lb (31,751 kg) and in 2019, it was increased to 135,000 lb

(61,235 kg). Amendment 21, however, would establish an annual set-aside of 800,000 lb (362,874 kg) for NGOM vessels. FSF comments that this is not consistent with historic allocations, nor is a set-aside of 800,000 lb (362,874 kg) consistent with either Amendment 21's Purpose and Need or its Goals and Objectives. Accordingly, FSF states that Amendment 21's allocation approach is arbitrary and capricious. Achievable access to the NGOM is important to the limited access fleet in the face of climate change and potential shifts in species abundance and distribution.

*Response:* NMFS disagrees that the allocation approach was arbitrary and that the allocation method is not consistent with the Purpose and Need or the Goals and Objectives of the Amendment. The purpose of Amendment 21, specific to the NGOM, is to allow for more controlled access by the limited access and LAGC components and increase monitoring in ways that support a growing directed scallop fishery in Federal waters. The need for this action is to promote conservation of the scallop resource in the NGOM and to manage total removals from the area by all fishery components. The Goals and Objectives specific to the NGOM are to:

1. Support a growing directed scallop fishery in Federal waters in the NGOM;
2. Allow for orderly access to the scallop resource in this area by the LAGC and limited access components; and
3. Establishing mechanisms to set allowable catches and accurately monitor catch and bycatch from the NGOM.

Amendment 11 allowed limited access vessels to access the NGOM on DAS. However, at the time, there had not been significant limited access fishing in the area for many years. In 2016, the limited access fleet began fishing in the area, landing 292,517 lb (132,683 kg) in 74 days before the area closed. In 2017, the limited access fleet returned to the NGOM landing 1,578,020 lb (715,778 kg) of scallops in 23 days before the area closed. It was this drastic increase in effort by the limited access fleet on DAS

that led to the Council's desire to have better controls on limited access removals from the NGOM to better conserve the resource in the area. Amendment 21 provides the Council with the tools to control removals from the NGOM and better conserve the resource in the area. Further, it provides the mechanism to develop more controlled access to the NGOM by the limited access fleet once the allocation to the area exceeds the NGOM set-aside trigger.

The 800,000-lb (362,874-kg) set-aside was not selected by the Council to be allocated only to the vessels that are accessing the NGOM currently. As stated above, there are a total of 427 LAGC permits and 338 IFQ permits that could fish the NGOM set-aside. In 2019, 110 NGOM permits were issued, and 41 vessels (NGOM and IFQ) landed scallops from the area. The 800,000-lb (362,874-kg) set aside supports some additional participation in the NGOM fishery by LAGC vessels without impacting the current harvest levels of existing participants.

*Comment 5:* FSF comments that the F rate being used to set the NGOM scallop allocation has no official Council sanction, nor is it subject to notice and comment rulemaking, as it should be. Nothing in Amendment 21 or its decision-making materials established this F range for the NGOM annual harvest setting. They comment that it does not appear that the Council considered either this F range or any methodology to set any F range for the NGOM as part of its Amendment 21 deliberations. Rather, at a meeting on February 27, 2020, the Scallop Committee passed a motion "to apply a range of F rates for setting the NGOM total allowable landings (TAL) in allocation alternatives being considered in Amendment 21 as  $F=0.15$  to  $F=0.25$ ." From there, FSF argues the F rate was impermissibly taken as a given throughout the remainder of the Amendment 21 development process and is included in the Amendment 21 proposed rule as if it had Council sanction.

*Response:* NMFS disagrees that the F rate was impermissibly taken as a “given.”

The motion in question specifically grants permission to apply F rates of  $F=0.15$  to  $F=0.25$  to the NGOM allocation alternatives. This motion carried 7-0-0 at the Scallop Oversight Committee. The rationale for this motion states, “Recent framework actions have analyzed F rates from  $F=0.15$  up to  $F=0.25$ . This could be a way to grow the biomass in the NGOM management area and support sustainable annual harvest. Modifying the F rate used to set the NGOM TAL could be adjusted in a future framework.” This rationale is consistent with the need to promote conservation of the scallop resource in the NGOM. Further, Amendment 21 is clear that the Council can adjust the F rate for the NGOM in a future framework action to set specifications annually, making it subject to notice and comment rulemaking, annually. For future specifications-setting actions, the Council is in no way bound by these F rates considered for the allocation alternatives in Amendment 21.

*Comment 6:* FSF commented that the F rate for the NGOM was not included as part of the Amendment 21 analyses, and that Amendment 21’s resulting economic analyses are therefore incomplete. The proposed rule states that Amendment 21 “maximizes yields and economic benefits,” but the supporting analyses do not provide any practical indication of its relative impacts on the NGOM and non-NGOM vessels, respectively.

FSF continues that, while the economic analyses compare the revenue generated by the LAGC and limited access fleets, respectively, with NGOM allocations of 100,000 lb (45,359 kg) to 6,000,000 lb (2,721,554 kg), these analyses do not integrate the F rate limit contained in Amendment 21 into the analyses. FSF comments that the F rate is a material element of the equation, and that an agency action is arbitrary and capricious if it fails to consider an important aspect of the problem.

*Response:* The NGOM is considered to be data poor relative to Georges Bank and the mid-Atlantic. The Gulf of Maine, and the NGOM management unit, have not been regularly surveyed for scallops. The NGOM is outside the areas covered by the stock assessment models (Georges Bank and the mid-Atlantic). The F rates considered in Amendment 21 were selected to promote conservation. Further, because the NGOM is currently considered data poor, during the discussion of the motion to include these F rates, the Committee agreed that being able to adjust fishing mortality rates in a future action will be important, especially if methods to setting harvest levels in the NGOM evolve/improve over time. Given this, and given that the F rates considered in the Amendment 21 allocation alternatives are adjustable during any specifications-setting framework, it is not necessary to directly compare F rates as part of the allocation alternatives.

The economic analysis does address the relative impacts on limited access and LAGC vessels. The economic impacts of this measure are likely to be mixed and dependent on the size of the NGOM allocation. When scallop biomass in the NGOM management area is relatively low, and catch rates are low, the impact on the limited access component could be negligible compared to No Action because these vessels would be unlikely to fish their DAS in the management area rather than on Georges Bank or in the mid-Atlantic. When the NGOM allocation is below the set-aside trigger, the limited access and LAGC IFQ components would not receive any additional allocation, which would also be the case under No Action.

Compared to No Action, the preferred alternative is expected to have a direct positive impact when the NGOM allocation is above the set-aside trigger because the limited access and LAGC IFQ components would receive 95 percent of the allocation above the trigger, have access to the area, and would not have to fish DAS when accessing the area. This allocation would be in addition to the allocations from Georges

Bank and the mid-Atlantic that these permit holders receive each year. This is particularly important if the spatial extent of the scallop resource shifts in response to climate change. Further, because the preferred alternative would set landings limits for all components, there is a lower risk of harvest exceeding the allocation to the area compared to No Action.

*Comment 7:* FSF comments that if the F for the NGOM were set close to  $F=0.39$ , a set-aside of 800,000 lb (362,874 kg) would still be largely exclusionary. Under Amendment 21, revenues for the limited access fleet would not equalize with the NGOM vessels until 1,688,888 lb (766,067 kg) of scallops are harvested from the NGOM. Conversely, under the 95 percent/5 percent split and a 500,000-lb (226,796-kg) NGOM set-aside, revenues would equalize between the two fleets at roughly 1,000,000 lb (453,592 kg).

*Response:* As stated above, in fishing year 2017, the limited access fleet harvested 1,578,020 lb (715,778 kg) from the NGOM in 23 days. The Council believes that these levels of harvest are possible again and developed Amendment 21 to account for scenarios where removals were more consistent with removals from other areas in Georges Bank and the mid-Atlantic (*i.e.*, millions of lb instead of hundreds of thousands of lb).

*Comment 8:* FSF commented that, the NGOM is part of the Atlantic sea scallop stock's range that must be managed as a unit under National Standard 3.

*Response:* The Council manages the scallop resource throughout its range. Under the Scallop FMP, target fishing mortality rate and stock biomass are applied to the scallop resource, which spans from North Carolina to the U.S./Canada boundary. This represents the entire range of scallop stocks under Federal jurisdiction. Amendment 21 accounts for the scallop biomass in the NGOM as part of the legal limits in the fishery by adding biomass from the area into calculations of the OFL and ABC. Amendment 21



moves the accounting of the NGOM ACL from only within the OFL into the OFL and ABC/ACL for the entire fishery. The NGOM ACL will be set consistent with how the rest of the scallop fishery is managed, at the catch level equal to the F that has a 75-percent probability of remaining below the F associated with overfishing.

*Comment 9:* FSF comments that prorating the daily observer compensation rate in 12-hour increments for observed LAGC IFQ trips longer than 1 day threatens to reopen a loophole where IFQ vessels modify their behavior and fishing patterns to extend their trips to purposefully benefit from the additional compensation. Further, FSF comments that there is also no conservation benefit to the allocation contained in this proposed rule change, which is a known and documented detriment.

*Response:* NMFS disagrees. Aligning the amount that vessels can be compensated when carrying an observer with the length of a typical LAGC IFQ trip will reduce the risk of observer bias in the LAGC IFQ fishery. This is true in the current fishery that has a 600-lb (272-kg) trip limit and would hold true in the future with the larger 800-lb (363-kg) possession limit in access areas (*i.e.*, areas further offshore that take longer to access), which could result in longer trips. Currently, LAGC IFQ vessels are allowed 1 day of compensation for carrying an observer regardless of the length of a trip, but are required to assume the cost of having the observer on board even when a trip exceeds the 1-day limit. Prorating additional compensation in 12-hour increments over one 24-hour day and capping the amount of compensation that could be allocated on a single trip would make the level of compensation to a vessel more accurate with regard to the cost of carrying an observer on board for the full length of a trip and reduce the incentive for vessels to fish longer trips for the purpose of receiving additional compensation. Relieving vessels of the additional cost burden for trips of over 1 day will reduce the likelihood that fishing behavior will be different for observed trips versus unobserved trips. In addition, considering that observer data is a critical need for

accurately characterizing the behavior of the LAGC IFQ component and for documenting interactions with protected species, non-target species, and discards, it is likely that reducing any potential observer bias would reduce uncertainty around the impacts of these interactions and improve observer data when analyzed by the Council in future specifications actions. Having less uncertainty in the data streams used to inform impacts of the scallop fishery would likely have conservation benefits to the fishery as a whole in the future.

*Comment 10:* FSF strongly supports the 95/5 percent split above the set aside.

*Response:* NMFS thanks FSF for the comment.

### **Classification**

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this Amendment and final rule are consistent with the Amendment 21, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

This final rule does not contain policies with federalism or “takings” implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification.

During the development of preferred alternatives in Amendment 21, NMFS and the Council considered ways to reduce the regulatory burden and provide flexibility to the regulated community. The measures implemented by Amendment 21 related to

NGOM allocations and the LAGC IFQ possession limit in access areas, along with other Amendment 21 actions, increase the economic benefits on small entities both in the short- and long-term. The action for the NGOM allocation adjusts landing limits and related research and observer set-asides based on annual scallop surveys in the NGOM area, leading to increased harvest and wider fishery participation in the future. However, there would be no change to the LAGC IFQ allocation when increasing the LAGC IFQ possession limit in access areas.

Overall, the preferred alternatives in Amendment 21 ensure that catch levels are sustainable, reduce the risk of overfishing, and maximize yield and economic benefits. The establishment of the NGOM Set-Aside and the increase to the LAGC IFQ access area possession limit are expected to have an immediate positive economic gain with potential for increased fishing participants/participation or effort, particularly in the NGOM area when there are more scallop fishing opportunities. The preferred alternatives in other actions of Amendment 21 also have overall positive economic effects benefitting both small and large entities.

As a result, a regulatory flexibility analysis is not required and none has been prepared.

This final rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This rule revises the existing requirements for the collection of information OMB Control No. 0648-0546 by expanding the number of vessels required to carry observers and call-in to the observer program. Prior to Amendment 21, NGOM-permitted vessels were not required to carry observers. Amendment 21 would require that NGOM vessels call in to the observer program and, when selected, procure and carry an observer. Expanding the observer call-in requirement to directed scallop fishing in the NGOM means that monitoring requirements will be consistent for all scallop permit types

across the entirety of the Atlantic sea scallop resource within the U.S. Exclusive Economic Zone. This change increases the number of respondents by 110 (512 respondents to 622 respondents). This results in an additional 933 burden hours (5,252 hours to 6,185 hours) and an additional \$5,608 (\$44,937 to \$50,545) in total annual cost burden to the respondents. Public reporting burden for calling into the observer program is estimated to average 10 minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted on the following website: [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by using the search function and entering either the title of the collection or the OMB Control Number 0648-0546.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: January 6, 2022.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

**PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.2, revise the definition of “Open areas” to read as follows:

**§ 648.2 Definitions.**

\* \* \* \* \*

*Open areas*, with respect to the Atlantic sea scallop fishery, means any area that is not subject to restrictions of the Scallop Access Area Program specified in §§ 648.59 and 648.60, the Northern Gulf of Maine Management Area specified in § 648.62, Habitat Management Areas specified in § 648.370, Dedicated Habitat Research areas specified in § 648.371, the Frank R. Lautenberg Deep-Sea Coral Protection Area described in § 648.372, or the New England Deep-Sea Coral Protection Area in § 648.373.

\* \* \* \* \*

3. In § 648.14:

- a. Revise paragraphs (i)(1)(iii) and (x), the paragraph (i)(2)(vi) subject heading, and paragraphs (i)(2)(vi)(C), (D), and (E);
- b. Remove paragraphs (i)(3)(iii)(C) and (D);
- c. Revise paragraph (i)(3)(iv)(B), (i)(3)(v)(C) and (D), and (i)(4)(i)(A);
- d. Remove and reserve paragraph (i)(4)(i)(B);
- e. Revise paragraph (i)(4)(i)(C);
- f. Remove and reserve paragraph (i)(4)(i)(D);
- g. Remove paragraphs (i)(4)(i)(G) and (H);
- h. Revise paragraphs (i)(4)(ii)(A) and (B);

- i. Remove and reserve paragraph (i)(5)(ii);
- j. Revise paragraph (i)(5)(iii); and
- k. Remove paragraph (i)(6).

The revisions read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(iii) *Possession and landing.* Fish for, land, or possess on board a vessel per trip, or possess at any time prior to a transfer to another person for a commercial purpose, other than solely for transport on land in excess of any of the possession and/or landing limits described in §§ 648.52 and 648.59.

\* \* \* \* \*

(x) *Presumption.* For purposes of this section, the following presumption applies: Scallops that are possessed or landed at or prior to the time when the scallops are received by a dealer, or scallops that are possessed by a dealer, are deemed to be harvested from the EEZ, unless the preponderance of evidence demonstrates that such scallops were harvested by a vessel fishing exclusively for scallops in state waters.

\* \* \* \* \*

(2) \* \* \*

(vi) *Scallop Rotational Area Management Program and Scallop Access Area Program requirements.*

\* \* \* \* \*

(C) Fish for, possess, or land scallops in or from a Scallop Access Area in excess of the vessel's remaining specific allocation for that area as specified in § 648.59(b)(3) or the amount permitted to be landed from that area.

(D) Possess more than 50 bu (17.6 hL) of in-shell scallops outside the boundaries of a Scallop Access Area by a vessel that is declared into the Scallop Access Area Program as specified in § 648.59.

(E) Fish for, possess, or land scallops in or from any Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

\* \* \* \* \*

(3) \* \* \*

(iv) \* \* \*

(B) Fail to comply with any requirement for declaring in or out of the LAGC scallop fishery or other notification requirements specified in § 648.10(f).

\* \* \* \* \*

(v) \* \* \*

(C) Fish for or land per trip, or possess in excess of 40 lb (18.1 kg) of shucked scallops at any time in or from any Scallop Access Area specified at § 648.60, unless declared into the Scallop Access Area Program.

(D) Fish for, possess, or land scallops in or from any Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(A) Fish for or land per trip, or possess at any time, in excess of the possession and landing limits described in § 648.52(a).

\* \* \* \* \*

(C) Declare into the NGOM scallop management area and fish against the NGOM Set-Aside after the effective date of a notification published in the **Federal Register** stating that after the NGOM Set-Aside has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

\* \* \* \* \*

(ii) \* \* \*

(A) Have an ownership interest in vessels that collectively are allocated more than 5 percent of the total IFQ scallop APL as specified in § 648.53(a)(9).

(B) Have an IFQ allocation on an IFQ scallop vessel of more than 2.5 percent of the total IFQ scallop APL as specified in § 648.53(a)(9).

\* \* \* \* \*

(5) \* \* \*

(iii) Fish for, possess, or land scallops in state or Federal waters of the NGOM management area after the effective date of notification in the **Federal Register** that the LAGC share of the NGOM Set-Aside has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

\* \* \* \* \*

4. In § 648.52, revise paragraphs (a) through (f) to read as follows:

**§ 648.52 Possession and landing limits.**



(a) *IFQ trips*—(1) *Open area trips*. A vessel issued an IFQ scallop permit that is declared into the IFQ scallop fishery in the open area, as specified in § 648.10(f), or on a properly declared NE multispecies, surfclam, or ocean quahog trip (or other fishery requiring a VMS declaration) and not fishing in a scallop access area, unless as specified in paragraph (g) of this section or exempted under the state waters exemption program described in § 648.54, may not possess or land, per trip, more than 600 lb (272 kg) of shucked scallops, or possess more than 75 bu (26.4 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line on a properly declared IFQ scallop trip, or on a properly declared NE multispecies, surfclam, or ocean quahog trip, or other fishery requiring a VMS declaration, and not fishing in a scallop access area.

(2) *Access areas trips*. A vessel issued an IFQ scallop permit that is declared into the IFQ Scallop Access Area Program, as specified in § 648.10(f), may not possess or land, per trip, more than 800 lb (363 kg) of shucked scallops, or possess more than 100 bu (35.2 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line on a properly declared IFQ scallop access area trip. Vessels fishing the 2022 default access area trips shall be subject to a 600-lb (272-kg) possession limit, as described in § 648.59(g)(3)(v).

(b) *NGOM trips*. A vessel issued an NGOM scallop permit, or an IFQ scallop permit that is declared into the NGOM scallop fishery and fishing against the NGOM Set-Aside as described in § 648.62, unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 200 lb (90.7 kg) of shucked scallops, or possess more than 25 bu (8.81 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in

any calendar day. Such a vessel may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS demarcation line on a properly declared NGOM scallop fishery trip.

(c) *Incidental trips.* A vessel issued an Incidental scallop permit, or an IFQ scallop permit that is not declared into the IFQ scallop fishery or on a properly declared NE multispecies, surfclam, or ocean quahog trip or other fishery requiring a VMS declaration as required under § 648.10(f), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 40 lb (18.1 kg) of shucked scallops, or possess more than 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(d) *Limited access vessel access area trips.* Owners or operators of vessels with a limited access scallop permit that have properly declared into the Scallop Access Area Program as described in § 648.59 are prohibited from fishing for or landing per trip, or possessing at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.59(b)(5).

(e) *Limited access vessel open area in-shell scallop possession limit.* Owners or operators of vessels issued limited access permits are prohibited from fishing for, possessing, or landing per trip more than 50 bu (17.6 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

(f) *Limited access vessel access area in-shell scallop possession limit.* A limited access vessel that is declared into the Scallop Area Access Program as described in § 648.59, may not possess more than 50 bu (17.6 hL) of in-shell scallops outside of the Access Areas described in § 648.60.

\* \* \* \* \*

5. In § 648.53:

- a. Revise paragraphs (a)(3)(ii) and (a)(8);
- b. Add paragraph (a)(9); and
- c. Revise paragraphs (g)(1), (h)(3)(i)(A) and (B), (h)(5)(i), (h)(5)(ii)(A), and (h)(5)(iii).

The revisions and addition read as follows:

**§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, individual fishing quotas (IFQ).**

(a) \* \* \*

(3) \* \* \*

(ii) *APL*. The APL shall be equal to the combined projected landings by the limited access and LAGC IFQ, in open areas, access areas, and Northern Gulf of Maine management area after set-asides (RSA, NGOM, and observer) and incidental landings are accounted for, for a given fishing year. Projected scallop landings are calculated by estimating the landings that will come from open area, access area, and Northern Gulf of Maine effort combined for both limited access and LAGC IFQ fleets. These projected landings shall not exceed the overall ABC/ACL and ACT, as described in paragraph (a) of this section.

\* \* \* \* \*

(8) *Northern Gulf of Maine Total Allowable Landings (TAL)*. The NGOM TAL is the landings available for harvest from the NGOM Management Area. The TAL shall be set by applying a fishing mortality rate of  $F=0.15$  to  $F=0.25$  to exploitable biomass estimated from open areas of the NGOM.

(i) *NGOM Observer Set-Aside*. The NGOM TAL shall be reduced by 1 percent to off-set monitoring costs for vessels fishing in this area. The NGOM monitoring set-aside

would be added to the fishery-wide observer set-aside, as described in paragraph (g) of this section.

(ii) *NGOM Research Set-Aside*. The NGOM TAL shall be reduced by 25,000 lb (11,340 kg) to be added to the fishery-wide research set-aside, as described in § 648.56(d).

(iii) *Northern Gulf of Maine Set-Aside*. The NGOM Set-Aside shall be the portion of the NGOM TAL that is available for harvest by the LAGC IFQ and NGOM fleets at 200 lb (90.7 kg) per trip per day as set through specifications. After the observer and research set-asides are removed, the first 800,000 lb (362,874 kg) of the NGOM TAL shall be allocated to the NGOM Set-Aside. For all allocation above 800,000 lb (362,874 kg), 5 percent shall go to the NGOM Set-Aside, and 95 percent shall go to the NGOM Annual Projected Landings.

(iv) *NGOM APL*. The NGOM APL shall be the portion of the NGOM TAL that is available for harvest for the limited access and LAGC IFQ fleets set through specifications after the observer and research set-asides are removed and the first 800,000 lb (362,874 kg) of the NGOM TAL are allocated to the NGOM Set-Aside. For all allocation above 800,000 lb (362,874 kg), 5 percent shall go to the NGOM set-aside, and 95 percent shall go to the NGOM APL. The method in which the limited access and LAGC IFQ components will access the NGOM APL will be determined in future specifications.

(9) *Scallop fishery catch limits*. The following catch limits will be effective for the 2021 and 2022 fishing years:

Table 1 to Paragraph (a)(9) - Scallop Fishery Catch Limits

Catch limits	2021 (mt)	2022 (mt) <sup>1</sup>
OFL	45,392	41,926

<b>Catch limits</b>	<b>2021 (mt)</b>	<b>2022 (mt) <sup>1</sup></b>
ABC/ACL (discards removed)	30,517	28,074
Incidental Catch	23	23
RSA	567	567
Observer Set-Aside	305	281
ACL for fishery	29,622	27,203
Limited Access ACL	27,993	25,707
LAGC Total ACL	1,629	1,496
LAGC IFQ ACL (5 percent of ACL)	1,481	1,360
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	148	136
Limited Access ACT	24,260	22,279
APL (after set-asides removed)	17,269	(1)
Limited Access APL (94.5 percent of APL)	16,319	(1)
Total IFQ Annual Allocation (5.5 percent of APL) <sup>2</sup>	950	712
LAGC IFQ Annual Allocation (5 percent of APL) <sup>2</sup>	863	648
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) <sup>2</sup>	86	65

<sup>1</sup> The catch limits for the 2022 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2022 that will be based on the 2021 annual scallop surveys. The 2022 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

<sup>2</sup> As specified in paragraph (a)(6)(iii)(B) of this section, the 2022 IFQ annual allocations are set at 75 percent of the 2021 IFQ Annual Allocations.

\* \* \* \* \*

(g) \* \* \*

(1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL defined in paragraph (a)(3) of this section and 1 percent of the NGOM ABC/ACL shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. This observer set-aside is specified through the specifications or framework adjustment process defined in § 648.55.

\* \* \* \* \*

(h) \* \* \*

(3) \* \* \*

(i) \* \* \*

(A) Unless otherwise specified in paragraphs (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2.5 percent of the IFQ-only annual allocation to the IFQ scallop vessels as described in paragraph (a)(6) of this section.

(B) A vessel may be initially issued more than 2.5 percent of the IFQ-only annual allocation allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2.5 percent of the IFQ-only annual allocation to the IFQ scallop vessels as described in paragraph (a)(6) of this section. A vessel that is allocated an IFQ that exceeds 2.5 percent of the IFQ-only annual allocation to the IFQ scallop vessels as described in paragraph (a)(6) of this section, in accordance with this paragraph (h)(3)(i)(B), may not receive IFQ through an IFQ transfer, as specified in paragraph (h)(5) of this section. All scallops that

have been allocated as part of the original IFQ allocation or transferred to a vessel during a given fishing year shall be counted towards the vessel cap.

\* \* \* \* \*

(5) \* \* \*

(i) *Temporary IFQ transfers*—(A) *IFQ-only vessels*. Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may temporarily transfer (*e.g.*, lease) its entire IFQ allocation, or a portion of its IFQ allocation, to another IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. IFQ can be temporarily transferred more than once (*i.e.*, re-transferred). For example, if a vessel temporarily transfers IFQ to a vessel, the transferee vessel may re-transfer any portion of that IFQ to another vessel. There is no limit on how many times IFQ can be re-transferred in a fishing year. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

(B) *Limited access vessels with LAGC IFQ*. Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of a limited access vessel with LAGC IFQ (and/or a limited access permit with LAGC IFQ in confirmation of permit history) may temporarily transfer (*e.g.*, lease) its entire IFQ allocation, or a portion of its IFQ allocation, to an IFQ-only scallop vessel that does not have a limited access permit. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. IFQ can be temporarily transferred more than once (*i.e.*, re-transferred). The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

\* \* \* \* \*

(ii) \* \* \*

(A) Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may transfer IFQ permanently to or from another IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit. Any such transfer cannot be limited in duration and is permanent as to the transferee, unless the IFQ is subsequently permanently transferred to another IFQ scallop vessel. IFQ may be permanently transferred to a vessel and then be re-transferred (temporarily transferred (*i.e.*, leased) or permanently transferred) by such vessel to another vessel in the same fishing year. There is no limit on how many times IFQ can be re-transferred in a fishing year. Limited access vessels with LAGC IFQ permits are prohibited from permanently transferring or receiving IFQ.

\* \* \* \* \*

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may transfer that vessel's IFQ to another IFQ scallop vessel, regardless of whether or not the vessel has fished under its IFQ in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that the transfer reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. IFQ may be temporarily or permanently transferred to a vessel and then temporarily re-transferred (*i.e.*, leased) or permanently re-transferred by such vessel to another vessel in the same fishing year. There is no restriction on how many times IFQ can be re-transferred. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the allocation to IFQ-only scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of



the allocation to IFQ-only scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not permanently transfer or receive IFQ. Further, they may not temporarily receive IFQ.

\* \* \* \* \*

6. In § 648.55, revise paragraph (a)(1) and paragraph (f) introductory text to read as follows:

**§ 648.55 Specifications and framework adjustments to management measures.**

(a) \* \* \*

(1) The Scallop Plan Development Team (PDT) shall meet at least every 2 years to assess the status of the scallop resource and to develop and recommend the following specifications for a period of up to 2 years, as well as second or third-year default measures, for consideration by the New England Fishery Management Council's Atlantic Sea Scallop Oversight Committee and Advisory Panel: OFL, overall ABC/ACL, sub-ACLs, sub-ACTs, DAS open area allocations, possession limits, modifications to rotational area management (*e.g.*, schedule, rotational closures and openings, seasonal restrictions, modifications to boundaries, etc.), access area limited access poundage allocations and LAGC IFQ fleet-wide trip allocations, annual incidental catch target TAC, and NGOM TAL.

\* \* \* \* \*

(f) *Framework adjustments.* The Council may at any time initiate a framework adjustment to add or adjust management measures within the Scallop FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP. The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. To address interactions between the scallop fishery and sea turtles and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Sea Scallop Access Area openings, seasonal

closures, gear modifications, increased observer coverage, and additional research. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures may include specifications measures specified in paragraph (a) of this section, which must satisfy the criteria set forth § 648.53(a) in order to prevent overfishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis. Other measures that may be changed or implemented through framework action include:

\* \* \* \* \*

7. In § 648.56, revise paragraph (d) to read as follows:

**§ 648.56 Scallop research.**

\* \* \* \* \*

(d) Available RSA allocation shall be 1.275 million lb (578 mt) annually, which shall be deducted from the ABC/ACL specified in § 648.53(a) prior to setting ACLs for the limited access and LAGC fleets, as specified in § 648.53(a)(3) and (4), respectively. Approved RSA projects shall be allocated an amount of scallop allocation that can be harvested in open areas, available access areas, and the NGOM. The specific access areas that are open to RSA harvest and the amount of NGOM allocation to be landed through RSA harvest shall be specified through the framework process as identified in § 648.59(e)(1). In a year in which a framework adjustment is under review by the Council and/or NMFS, NMFS shall make RSA awards prior to approval of the framework, if practicable, based on total scallop allocation needed to fund each research project. Recipients may begin compensation fishing in open areas prior to approval of the framework, or wait until NMFS approval of the framework to begin compensation fishing within approved access areas.

\* \* \* \* \*

8. In § 648.59, revise the section heading and paragraphs (a) introductory text, (a)(3), (b)(4), (g)(3)(i), and (g)(4)(ii) to read as follows:

**§ 648.59 Scallop Rotational Area Management Program and Scallop Access Area Program requirements.**

(a) The Scallop Rotational Area Management Program consists of Scallop Rotational Areas, as defined in § 648.2. Guidelines for this area rotation program (*i.e.*, when to close an area and reopen it to scallop fishing) are provided in § 648.55(a)(6). Whether a rotational area is open or closed to scallop fishing in a given year, and the appropriate level of access by limited access and LAGC IFQ vessels, are specified through the specifications or framework adjustment processes defined in § 648.55. When a rotational area is open to the scallop fishery, it is called an Access Area and scallop vessels fishing in the area are subject to the Scallop Access Area Program Requirements specified in this section. Areas not defined as Scallop Rotational Areas specified in § 648.60, Habitat Management Areas specified in § 648.370, or areas closed to scallop fishing under other FMPs, are governed by other management measures and restrictions in this part and are referred to as Open Areas.

\* \* \* \* \*

(3) *Transiting a Scallop Access Area.* Any sea scallop vessel that has not declared a trip into the Scallop Access Area Program may enter a Scallop Access Area, and possess scallops not caught in the Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2. Any scallop vessel that has declared a trip into the Scallop Area Access Program may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area provided its gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety

reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Scallop Rotational Area, as defined in § 648.60(d), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(b) \* \* \*

(4) *Area fished.* While on a Scallop Access Area trip, a vessel may not fish for, possess, or land scallops in or from areas outside the Scallop Access Area in which the vessel operator has declared the vessel will fish during that trip, and may not enter or exit the specific declared Scallop Access Area more than once per trip unless there is a compelling safety reason. A vessel on a Scallop Access Area trip may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area as provided for under paragraph (a)(3) of this section.

\* \* \* \* \*

(g) \* \* \*

(3) \* \* \*

(i) An LAGC scallop vessel authorized to fish in the Scallop Rotational Areas specified in § 648.60 or in paragraph (g)(3)(iv) of this section may land scallops, subject to the possession limit specified in § 648.52(a)(2), unless the Regional Administrator has issued a notice that the number of LAGC IFQ access area trips have been or are projected to be taken. All LAGC IFQ access area trips must be taken in the fishing year that they are allocated (*i.e.*, there are no carryover trips). The total number of LAGC IFQ trips in an Access Area is specified in the specifications or framework adjustment processes defined in § 648.55.

\* \* \* \* \*

(4) \* \* \*

(ii) *Other species*. Unless issued an LAGC IFQ scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Closed Area I, Closed Area II, Closed Area II Extension, and Nantucket Lightship Rotational Areas specified in § 648.60, and the Nantucket Lightship North Scallop Access Area specified in paragraph (g)(3)(iv) of this section is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8)(i). Such a vessel may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided that it has not declared into the Scallop Access Area Program. Such a vessel is prohibited from fishing for, possessing, or landing scallops.

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